

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

FRED JAMES MUHR
Audubon County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2010-AQ- 57
NO. 2010-SW- 39

TO: Fred James Muhr
2907 Highway 71
Exira, Iowa 50076

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Fred James Muhr for the purpose of resolving the air quality and solid waste violations which occurred at the Greenbrier Golf Club near Exira, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Keith Wilken, Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code

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(IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. In 2009, Fred James Muhr purchased the Greenbrier Golf Club, including the club house and a residence. The property is located at 2519 Highway 71, Exira, Iowa ((Section 22, Hamlin Township, Audubon County)). Mr. Muhr plans to reside in the residence and lease the golf course portion of the property.

2. On April 6, 2010, Keith Wilken, DNR Field Office 4 environmental specialist observed open burning of solid waste at the Greenbrier Golf Club. The solid waste included tires from golf carts, paint cans, and other miscellaneous trade waste and solid waste. At the time of Mr. Wilken's visit, the open burning areas were still smoldering.

3. On April 8, 2010, Mr. Wilken contacted Mr. Muhr regarding the open burning at the Greenbrier Golf Club on the previous day. Mr. Muhr confirmed he was the owner of the property, but stated he was leasing the property and was not responsible. Mr. Wilken explained that as the owner of the property he was responsible for the open burning. Mr. Muhr then claimed that the burning was done by the previous owner. Mr. Wilken explained that the open burning was occurring the previous day. Mr. Wilken explained that there would likely be an administrative penalty. Mr. Wilken informed Mr. Muhr that the burning must stop.

4. On April 8, 2010, Mr. Wilken returned to the Greenbrier Golf Club. The party who was leasing the golf course portion of the property was burning various solid waste at the time of the visit. The person stated that Mr. Muhr had not told him to stop burning. Mr. Wilken informed the person that all the solid waste must be taken to a landfill and only the old trees and tree trimmings from the property could be burned on site.

5. On April 12, 2010, a Notice of Violation letter was issued to Mr. Muhr for the improper solid waste disposal and open burning that was discovered on his property. The letter explained the regulations and informed Mr. Muhr the matter was being referred for further enforcement.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). As the owner of the property, Mr. Muhr is responsible for the open burning that occurred at his property. DNR Field Office 4 personnel noted evidence of open burning

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of trade waste and various other types of solid waste. The above facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. As the owner of the property, Mr. Muhr is responsible for the improper disposal of solid waste that occurred at his property. DNR Field Office 4 personnel noted evidence of the open burning of trade waste and other solid waste. The material was burned rather than being disposed of at an approved landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Mr. Muhr agrees to do the following:

1. Mr. Muhr shall cease all improper solid waste disposal at any property he owns in the state of Iowa and shall ensure that all parties operating on properties he owns are operating in compliance with the solid waste disposal regulations;
2. Mr. Muhr shall cease all non-exempt open burning at any property he owns in the state of Iowa and shall ensure that all parties operating on properties he owns are operating in compliance with the open burning regulations;
3. Mr. Muhr shall pay a penalty of \$1,250.00 within 30 days of the date the Director signs this administrative consent order. This payment was received by the DNR on December 1, 2010.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the

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most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$1,250.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit – The operator of the golf course portion of the property has gained an economic benefit by failing to properly dispose the trade waste and other solid waste. However, the economic benefit received by Mr. Muhr is minimal and therefore economic benefit is not being assessed.

Gravity of the Violation – Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Violations of the open burning and solid waste regulations threaten the integrity of the air quality and solid waste regulatory programs. Based on the above considerations, \$1,000.00 is being assessed for this factor.

Culpability – Mr. Muhr has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct and the conduct of parties leasing his property are subject to DNR's rules. The open burning and improper solid waste disposal of the trade waste and other solid waste demonstrates a lack of control on the part of Mr. Muhr as the owner of the property. Additionally, Mr. Muhr failed to inform the party who leased the golf course to stop open burning after he was told to do so by the DNR. Based on the above considerations, \$250.00 is assessed for this factor.

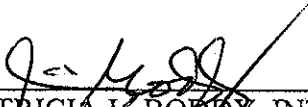
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of the Mr. Muhr. For that reason, Mr. Muhr waives the rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

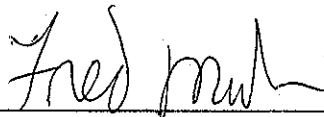
Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.

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PATRICIA L. BOBBY, INTERIM DIRECTOR
Iowa Department of Natural Resources

Dated this 14 day of
December, 2010.



FRED JAMES MUHR

Dated this 8 day of
December, 2010.

Barb Stock (Con 10-6 Audubon County); Kelli Book; DNR Field Office 4; EPA; VI.C and
VII.C.1